

No. 76-222

Supreme Court, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The findings of fact and opinion of the Tax Court (Pet. App. A 1a-70a) are not officially reported. The opinion of the court of appeals (Pet. App. B 74a-75a) is not yet officially reported.

JURISDICTION

The judgment of the court of appeals was entered on April 13, 1976. A petition for rehearing was denied on May 24, 1976. The petition for a writ of certiorari was filed on August 14, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Tax Court correctly valued, for federal estate tax purposes, stock held by the decedents.

STATUTE AND REGULATIONS INVOLVED

Section 2031 of the Internal Revenue Code of 1954 (26 U.S.C.) and Treasury Regulations on Estate Tax (1954 Code), Sections 20.2031-1(b) and 20.2031-2(f) (26 C.F.R.), are set forth at Pet. App. E 77a-80a.

STATEMENT

Alvin Thalheimer and Henrietta Blaustein died on July 8 and December 8, 1965, respectively. At the time of their deaths, they each owned shares of both Class A and Class B common stock of American Trading and Production Corp. (ATAPCO), a closely-held corporation (Pet. App. A 57a).

The number of shares and the percentage interest represented by their holdings were as follows (Pet. App. A 57a):

	<i>Class</i>	<i>Number of Shares</i>	<i>Percentage Interest</i>
Thalheimer	A	15,367	8.3
	B	28,745	5.3
Blaustein	A	9,700	5.2
	B	29,100	5.4

On the estate tax returns, the executors of the estates both reported the value of the Class A and B ATAPCO stock at \$60 per share, as of the dates of the decedents' deaths. On audit, the Commissioner of Internal Revenue determined that the value as of the dates of Thalheimer's and Blaustein's deaths was \$167 and \$168, respectively (Pet. App. A 57a-58a). After a trial, at which both parties presented testimony of valuation experts and numerous exhibits, the Tax Court determined that the fair market

values of the ATAPCO stock were as follow (Pet. App. A 70a):

	<i>Estate of Alvin Thalheimer</i>	<i>Estate of Henrietta Blaustein</i>
Valuation Date	July 8, 1965	December 8, 1965
Class A Common		
Fair Market		
Value per share	\$112	\$113
Class B Common		
Fair Market		
Value per share	\$106	\$107

The court stated that "[w]e believe these values represent the price that a willing buyer would have paid a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the relevant facts" (Pet. App. A 70a).

In the Tax Court, both estates and the Commissioner agreed that the proper starting point was a valuation of the assets owned by ATAPCO. On the relevant dates, ATAPCO owned large blocks of stock in Standard Oil of Indiana, Standard Oil of New Jersey, United States Fidelity and Guaranty Corporation, and Union Trust Company of Maryland; it also held a controlling interest in Crown Central Petroleum Company (Pet. App. A 53a; R. 547e; Pet. 9).¹

The Tax Court began the valuation process by determining the market prices for ATAPCO's stockholdings on the relevant dates. The court added to that amount the book value of ATAPCO's holdings in Crown Petroleum and the

¹"R." references are to the record appendix in the court of appeals.

stipulated value of ATAPCO's other assets on the relevant dates. It then subtracted ATAPCO's liabilities to obtain a preliminary net asset valuation for ATAPCO. From this valuation, the court then determined the preliminary net asset value of the shares owned by the decedents (Pet. App. A 66a-68a).

The court discounted that preliminary per share figure by from 34 to 37 percent to reflect the lack of ready marketability of the unregistered ATAPCO shares and the minority position of the estates' shares. It concluded that the shares had a fair market value of approximately \$110 per share (Pet. App. A 68a-70a).

The court of appeals held there was no error in the Tax Court's valuation analysis. However, it remanded the case to that court to consider whether ATAPCO's interest in another corporation resulted in duplicative adjustments (Pet. App. C 74a-75a).

ARGUMENT

1. This case involves only the factual question of the value of particular shares in a closely-held corporation for federal estate tax purposes. While the goal of the valuation process—determining what a willing buyer would pay and a willing seller would accept for the property—is a constant in valuation cases, factual variations require that particular valuation factors be employed on a case-by-case basis. See Treasury Regulations, Section 20.2031-2(f)(2) (26 C.F.R.).

In this case the process of valuation was complex because it involved shares of stock in a closely held corporation that, in turn, had substantial holdings in other corporations. The Tax Court adopted a valuation technique that first focused on the per-share value of ATAPCO's net assets and then discounted that preliminary figure to reflect

the various factors affecting marketability. This mathematical process is in accord with the valuation techniques employed by other courts. See, e.g., *Hamm v. Commissioner*, 325 F. 2d 934, 938 (C.A. 8), certiorari denied, 377 U.S. 993; *In re Nathan's Estate*, 166 F. 2d 422 (C.A. 9); *Schroeder v. Commissioner*, 13 T.C. 259; *Estate of Cruikshank v. Commissioner*, 9 T.C. 162; see Lowndes and Kramer, *Federal Estate and Gift Taxation* §18.22, nn. 55, 58 (3d ed., 1974), and accompanying text. Indeed, the discounts the Tax Court applied to reflect the minority status of the decedents' shareholdings and the absence of a ready market closely approximate those used in other cases involving minority interests in similar closely-held corporations. *Laird v. Commissioner* 38 B.T.A. 925, on remand from 85 F. 2d 598 (C.A. 3); *Obermer v. United States*, 238 F. Supp. 29 (D. Hawaii).

Petitioners argue (Pet. 8-9, 10) that the Tax Court erred in failing to discount ATAPCO's assets in the preliminary stages of the valuation process to their liquidation value before discounting the asset per share values derived—a requirement they contend that *Laird v. Commissioner, supra*, requires. But petitioners overlook the fact that the shares to be valued were the ATAPCO shares of the decedents. The willing buyer-willing seller test (see Section 20.2031-1(b) of the Treasury Regulations) applies only to valuation of those shares. The initial step in the valuation process, including the valuation of ATAPCO's assets, was simply preliminary. Thus, as long as the ultimate determination of the value of the decedents' ATAPCO shares was properly discounted to satisfy the willing buyer-willing seller test, it is irrelevant whether the preliminary valuation of the ATAPCO assets also satisfied that test.

Laird v. Commissioner, supra, is not to the contrary. That case does not hold that a corporation's assets must

first be valued at their liquidation value (including any discount) and that the per-share values derived from the asset values then again be discounted. To the contrary, the court in *Laird* required only that the trier of fact consider the market price of stock owned by the corporation and "all other factors having a bearing upon the value of the stock" (85 F. 2d at 600-601). Cf. Treasury Regulations, Section 20.2031-2(f) (Pet. App. E 79a).² Here, the Tax Court considered the preliminary discounts urged by petitioners but properly concluded that they were not justified because ATAPCO did not contemplate liquidation or sale of its assets. Cf. *Richardson v. Commissioner*, 151 F. 2d 102 (C.A. 2); *Estate of Cruikshank v. Commissioner*, 9 T.C. 162; *Estate of Huntington v. Commissioner*, 36 B.T.A. 698. See also Lowndes and Kramer, *supra*, at § 1822.

2. Petitioners further argue (Pet. 13-14, 17) that the Tax Court erroneously disregarded the stock market price in its preliminary assessment of ATAPCO's holdings in Crown Central Petroleum and that this aspect of the decision conflicts with *Amerada Hess Corp. v. Commissioner*, 517 F. 2d 75 (C.A. 3), certiorari denied, 423 U.S. 1037, and *Hazeltine Corp. v. Commissioner*, 89 F. 2d 513 (C.A. 3).

²Petitioners also assert that three trial court decisions (*Estate of Hecksher v. Commissioner*, 63 T.C. 485; *Obermer v. United States*, *supra*; *Bishop Trust Co. v. United States*, 42 A.F.T.R. 1221 (D. Hawaii) (Pet. 10) conflict with the decision below. In those cases, the courts found that potential capital gains or blockage ought to be taken into account in determining the per share value of a corporation's assets. Apart from the fact that a conflict with trial court decisions does not warrant resolution by this Court (see Rule 19(1)(b) of the Rules; Stern and Gressman, *Supreme Court Practice*, §4.8, pp. 161-163 (4th ed., 1969)), there is no conflict. Those cases merely hold that factors affecting the marketability of a corporation's assets may be considered in valuing the corporation's stock, especially when the corporation is in the process of liquidating those assets, as in *Estate of Hecksher*.

However, both *Amerada Hess* and *Hazeltine* recognize that there are circumstances when the stock market may not accurately reflect the value of stock. See *Amerada Hess*, *supra*, 517 F. 2d at 84; *Hazeltine*, *supra*, 89 F. 2d at 519. Here, the Tax Court concluded that the thin market for Crown shares on the relevant trading days, the control factor inherent in ATAPCO's holdings in Crown, the trend in market prices, and the market prices for eight comparable oil companies all indicated that the market price did not accurately reflect the value of the Crown shares. Under these circumstances, the Tax Court properly sought a more accurate guide for valuing the Crown shares.

3. Finally, petitioners argue (Pet. 16) that the decision in this case violates the "principle" established in *Ivan Allen Co. v. United States*, 422 U.S. 617, 629. There, the shares of publicly-traded stock held by the taxpayer-corporation were valued at "net realizable value." But in *Ivan Allen Co.*, the corporation's stockholdings were valued to determine whether it needed to accumulate current corporate earnings in order to meet the reasonable needs of the business or whether it was accumulating its earnings beyond the reasonable needs of the business. That inquiry was for the purpose of ascertaining whether the taxpayer's accumulations were in order to avoid the dividend tax on its shareholders so as to subject it to the accumulated earnings tax (Sections 531-537 of the Code). Since the taxpayer's marketable securities might be sold to meet its anticipated business needs and thus eliminate the need for accumulating current income, the Court held that the liquidation value, and not the cost, of the securities was the only relevant measure for those purposes.

Here, however, there is no indication that ATAPCO intended to liquidate any of its shareholdings. Indeed, petitioners' own expert testified that ATAPCO's shareholdings

should be retained (R. 85). *Ivan Allen Co.* is therefore distinguishable.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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